Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Cable Act	)	CS Docket No. 96-85
Reform Provisions of the	)	
Telecommunications Act of 1996	)	
	)	

To: The Commission

REPLY COMMENTS OF GENERAL ELECTRIC CAPITAL CORPORATION

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General Electric Capital Corporation ("GE Capital"), by its attorneys, submits these Reply Comments in response to the Order and Notice of Proposed Rulemaking adopted by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding ("Notice").[1] GE Capital's Reply Comments are limited to certain issues relating to rate relief for small cable operators, which are discussed in paragraphs 80-94 of the Notice.

I. INTRODUCTION

The Telecommunications Act of 1996 (the "1996 Act"), which was enacted on February 8, 1996, exempts "small cable operators" from certain rate regulation provisions of the Communications Act of 1934, as amended, in franchise areas where the operator serves 50,000 or fewer subscribers. To determine eligibility for this rate regulation relief, the 1996 Act defines a small cable operator as "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated

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[1] ___ FCC Rcd ___ (FCC 96-154, released April 9, 1996).

with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[1] Cable operators who meet these eligibility criteria are exempt from rate regulation of their cable programming services tiers ("CPST") and are exempt from basic tier regulation if their basic tier was the only service tier subject to regulation as of December 31, 1994. The competitive benefits to be gained by small cable operators who are freed from rate regulation of CPSTs are short-lived, however, because all cable systems will be entitled to deregulation of CPSTs as of March 31, 1999. Therefore, any final rules adopted in this proceeding to implement the small cable provisions of the 1996 Act will be of limited duration. Accordingly, the FCC should craft these rules carefully to enable small operators to gain during this very brief period the full competitive benefit of small system status envisioned by Congress when it adopted the 1996 Act.

II. GE CAPITAL'S INTEREST IN THE SMALL CABLE SYSTEM RULES

GE Capital, an indirect wholly owned subsidiary of General Electric Company, is a substantial lender to and equity participant in the communications industry, including the cable television industry. Yet GE Capital invests in a wide range of non-communications businesses as well. As a prudent investor, its investment decisions are guided by its assessment of where it can obtain the greatest return with the least risk. If that assessment points in the direction of aircraft leasing or power generation, the investment dollars will follow. Likewise, if communications-related businesses appear promising, investments will be made in that sector. In the vast majority of cases, GE Capital's investments in the communications industry are strictly passive investments that are treated as non-attributable interests under the FCC's current rules for broadcast and cable. As a passive investor, GE Capital has no desire to involve itself

[1] 47 U.S.C. § 623(m).

in the day-to-day management of cable systems in which it invests. On the other hand, as a prudent investor, GE Capital seeks to protect its investments through whatever degree of oversight is consistent with the FCC's attribution and ownership rules.

Eligibility for small cable operator rate relief under the 1996 Act depends upon whether the operator, either directly or through its affiliates, serves fewer than one percent of the cable subscribers in the nation and whether the operator is affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000. Therefore, the definition of "affiliate" is crucial in determining which operators are eligible for rate regulation relief during the three-year period prior to full deregulation of CPSTs.

Because it invests in the cable television industry, GE Capital has a substantial interest in ensuring that small cable systems in which it invests are not deprived of the competitive benefits of small system status simply by virtue of GE Capital's investment. The Commission, too, should have a strong interest in facilitating investments in the U.S. cable industry by substantial and reputable U.S. firms. However, if GE Capital is deemed an affiliate of the cable systems in which it invests and GE Capital's gross annual revenues are taken into account, these systems will be ineligible for small system treatment. This result seems completely at odds with the congressional and FCC intent to encourage investment in the domestic communications industry generally and the cable industry specifically. Accordingly, GE Capital agrees with those commenters who have urged the Commission to adopt a definition of affiliate that recognizes a distinction between active and passive investors and disregards the gross revenues of passive investors for purposes of small operator rate regulation relief.

III. THE DEFINITION OF "AFFILIATE" SHOULD EXCLUDE PASSIVE INVESTORS

The Commission proposes to define "affiliate" for purposes of the small cable operator rules as any entity that has a 20 percent or greater equity interest in the operator, whether active or passive, or that holds de jure or de facto control over the operator. Notice, ¶ 26. GE Capital believes that the proposed definition, by sweeping in passive institutional investors, will deprive small cable operators of access to capital that is badly needed to upgrade their systems, add new services to meet subscriber demands, and compete more effectively with other video services providers. Moreover, a definition that disregards the active-passive distinction will foreclose to GE Capital the opportunity to invest in small operators, who will seek to maximize the revenue advantages to be derived from small system status. As a result, GE Capital's investments in the cable industry will be steered away from those operators with the greatest need for outside investment and toward those operators with the least need. This clearly is not the result intended by Congress. Therefore, GE Capital agrees with those commenters who have urged the Commission to modify its proposed rules to exclude passive investments from its affiliation standard.[2]

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[2] See, e.g., Comments of The National Cable Television Association, Inc. at 34-36; Comments of Cole, Raywid & Braverman, L.L.P. at 14-15; Comments of The Cable Telecommunications Association at 4-5; Comments of the Small Cable Business Association at 13-19. A number of these commenters have urged the Commission to apply a more liberal definition of "passive investor" than is traditionally applied under the FCC's attribution rules. See, e.g., Comments of Cole, Raywid & Braverman, L.L.P. ("The Commission should presume every limited partner is passive and not require the additional insulating safeguards and certifications required in other circumstances") (emphasis original). GE Capital supports this recommendation and indeed has argued in the Commission's pending attribution rulemaking proceeding that the current insulation criteria for limited partners do not comport with business reality, discourage investments by sophisticated sources of capital, and involve subjective interpretations that lead to abuses and selective

(continued...)

As the National Cable Television Association noted in its Comments,[3] the FCC traditionally has provided for more liberal attribution benchmarks for institutional investors and for non-attribution of non-voting stock and insulated limited partnership interests as a way to encourage investment in entities in need of capital. These more liberal attribution standards have had the intended effect of encouraging investment in the broadcast and cable industries, while simultaneously fostering the Commission's goal of increased diversity in the ownership of the media of mass communications. The active-passive distinction is equally valid for achieving the purposes of the small cable provisions of the 1996 Act. Small cable operators should not be forced to choose between the benefits of access to investment capital and the benefits of small system rate deregulation.

IV. IF THE COMMISSION DECLINES TO EXCLUDE PASSIVE INVESTORS FROM THE DEFINITION OF "AFFILIATE," THE "GROSS REVENUES" TEST SHOULD BE LIMITED TO CABLE-RELATED REVENUES

Even if the Commission declines to exclude passive institutional investors from the definition of "affiliate" for purposes of the small cable operator relief provisions, it can nevertheless make it possible for large financial institutions to invest in small systems by limiting the "gross revenues" component of the affiliate definition to cable-related revenues. This distinction would help to achieve the congressional objective of fostering competition and lessening media concentration without discouraging investments by non-cable companies in small systems. Although neither the 1996 Act nor its legislative history is clear on whether Congress

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[2] (...continued)
enforcement. See Reply Comments of GE Capital, MM Docket No. 94-150, at 21-23 (filed July 10, 1995).

[3] Comments of The National Cable Television Association at 35.

intended all revenues from any source to be considered, there is precedent for considering only cable-related revenues. In its Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92-266 and 93-215, the FCC amended its definition of small cable operators to encompass a broader range of cable systems that would be eligible for special rate and administrative treatment.[4] Specifically, the FCC expanded the definition of small cable operators to include systems serving 15,000 or fewer subscribers that are owned by small cable companies of 400,000 or fewer subscribers. Although the Commission rejected suggestions to include an annual revenue cap in the expanded definition, it explained that the 400,000 limit on total company subscribers correlated statistically with "annual regulated revenues" of $100 million.[5] The FCC's discussion of "regulated revenues" in the Sixth Report and Order clearly was intended to signify that the Commission was concerned only with revenues derived from cable television operations.

As noted in the Comments of Cole, Raywid & Braverman, L.L.P., the key problem with counting non-cable revenue in the gross revenue cap is that a large percentage of small cable operators will be precluded from taking advantage of the relief Congress provided without any of the corresponding benefits of being affiliated with a large cable company. Investments by large financial institutions do not eliminate the special problems faced by small operators because these institutional investors generally do not provide any operational expertise, administrative economies of scale, or discounts on programming or equipment. Therefore, the Commission

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[4] See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995) ("Sixth Report and Order").

[5] Id., ¶ 28 (emphasis added).

should not consider the non-cable revenues of institutional investors in determining eligibility for small cable operator relief.

V. CONCLUSION

Representatives of the cable television industry have made a compelling case in their opening comments that the definition of "affiliate" for purposes of the small cable operator rate relief provisions of the 1996 Act should not include passive institutional investors. GE Capital, as an investor in the cable industry, agrees with these commenters that the proposed definition of "affiliate," if adopted, will discourage investment in small cable systems by large financial institutions. Likewise, GE Capital agrees with those commenters who urge the Commission to exclude non-cable-related revenues from the statutory revenue cap. These two modest modifications to the proposed rules will help to achieve Congress's goal of providing certain limited competitive benefits to small cable operators during the three-year interim period prior to the sunset of CPST rate regulation for all cable operators.

Respectfully submitted,

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